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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ULIS MORRIS et al.,<br><br>Defendants and Appellants. | B279221<br><br>(Los Angeles County Super. Ct. No. BA444404) |

APPEAL from judgments of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant Ulis Morris.

Mark Yanis, under appointment by the Court of Appeal, for Defendant and Appellant Raylonzo Roberts.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Marc A. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Ulis Morris guilty of human trafficking minor Kayla C., and further found both Morris and his "pimp partner," defendant Raylonzo Roberts, guilty of human trafficking minor Adrianna S.

Defendants, who have largely joined one another's appellate arguments, contend that their trials should have been severed. They further contend that the court erred in finding Kayla unavailable and admitting her preliminary hearing testimony, excluding their human trafficking expert, and failing to instruct the jury that pimping, pandering, and contributing to the delinquency of a minor are lesser included offenses of human trafficking of a minor. Defendants also argue that the evidence was insufficient to support their convictions involving Adrianna.

We affirm the convictions.

## PROCEDURAL HISTORY

The Los Angeles County District Attorney filed a six-count amended information against defendants and a former codefendant, Antoinette Anderson. Anderson was not a party to the trial and is not a party to this appeal.

Count one of the amended information alleged that both defendants engaged in the human trafficking of a minor, Khariana H., for a commercial sex act with the intent to pander (Pen. Code, §§ 236.1, subd. (c)(1), 266i).[1] Counts two and six alleged that both defendants engaged in the human trafficking of a minor, Adrianna S., for a commercial sex act with the intent to pimp (count two) and pander (count six) (§§ 236.1, subd. (c)(1), 266h, 266i). Count three alleged that Morris engaged in the human trafficking of a minor, Kayla C., for a commercial sex act

[1]All further statutory references are to the Penal Code unless otherwise indicated.

with the intent to pimp (§§ 236.1, subd. (c)(1), 266h), and count four alleged that he illegally possessed a firearm (§ 29800, subd. (a)(1)).[2]

The amended information alleged that all of the human trafficking counts were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)), and that defendants had suffered strike priors (§§ 667, subds. (b)-(j), 1170.12). The court granted defendants' motions to bifurcate trial of the gang and prior conviction allegations from trial of the substantive offenses. It also granted Morris's motion to sever trial of his firearm charge from trial of the human trafficking charges, but denied defendants' motions to sever their trials from one another.

Defendants proceeded to a joint jury trial on the human trafficking charges. Morris represented himself in propria persona.

The jury found both defendants guilty of both human trafficking offenses involving Adrianna (counts two and six) and found Morris guilty of the human trafficking count involving Kayla (count three). The jury deadlocked on the human trafficking count involving Khariana (count 1). The trial court declared a mistrial as to that count, and later granted the prosecution's motion to dismiss it pursuant to section 1385. The jury found the gang allegations not true after a subsequent trial. Defendants waived their right to a jury trial on the strike prior allegations, which the court found true after a bench trial. The record does not reveal the disposition of Morris's firearm charge.

The court sentenced Roberts to the midterm of eight years on count two, which it doubled to 16 years due to Roberts's prior

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[2] Count four also named Anderson, and count five, another firearm possession count, named only Anderson.

strike. The court imposed the same sentence on count six, but stayed it pursuant to section 654. Roberts's sentence thus totaled 16 years.

The court also sentenced Morris to the midterm of eight years on count two, doubled to 16 years due to Morris's prior strike. As with Roberts, the court imposed and stayed an identical sentence on count 6. The court sentenced Morris to an additional 5 years, four months (one-third the midterm, doubled) on count three, for a total sentence of 21 years, four months.

Both defendants timely appealed.

## FACTUAL BACKGROUND

### I. Prosecution Evidence

#### A. "The Game"

Long Beach Police Department (LBPD) detective Satwan Johnson testified as a human trafficking expert. In that capacity, he provided general information on "the subculture of criminals who are involved in prostitution," known as "the game." The players in "the game" are pimps and commercial sex workers, who typically work for pimps. The average commercial sex worker is a female "runaway[ ] or throwaway[ ] with significant self-esteem issues" who enters "the game" when she is 12 or 13; it is common for such workers to lie about their age. The typical pimp is an adult male who seeks to earn money from the labor of commercial sex workers; Johnson characterized a pimp as "someone that owns sex slaves and brokers their sexual favors for profits."

Pimps recruit and control commercial sex workers in their employ, whom they call "bitches" or "toes," by using romance, physical force, or some combination of the two. They typically impose strict orders on their commercial sex workers, such as

requiring them to reach daily monetary "quotas" or "traps." Commercial sex workers who do not obey their pimp's orders are considered "out of pocket" and may face retaliation.

Commercial sex workers "pay the pockets" of their pimps by giving them the money they earn. According to Johnson and LBPD detective Raymond Arcala, pimps use some of the funds to provide the workers with basic necessities, such as food, clothing, and shelter. They keep the remainder of the money for themselves. Los Angeles Police Department (LAPD) officer Vanessa Rios testified that a pimp who is fully financially supported by his commercial sex workers is considered to be "all on a bitch."

Arcala testified that commercial sex workers often refer to their pimps as "Daddy." According to Rios, pimps refer to themselves as "P," and may do so in the context of a partnership. Johnson testified that it is common for pimps to work together as "pimp partners." He explained that pimp partners can help each other supervise their sex workers, and can use strength in numbers to intimidate their workers or gain their compliance. Pimp partners thus "can be more successful in their business."

Johnson testified that some commercial sex workers, about 15 to 20 percent, do not have pimps. Such workers are precluded from working in prostitution "tracks" that are "pimp-controlled." Rios testified that the "tracks" on Western and Figueroa in Los Angeles are pimp-controlled; "[y]ou cannot work on Figueroa and Western if you don't have a pimp." She identified several other "tracks" in Los Angeles County: Lankershim, Sepulveda, and Long Beach.

**B. Kayla**

Kayla was 17 years old at the time of the preliminary

hearing.[3] At that hearing, she testified that she met both defendants, whom she knew as C-Extra (Morris) and Major (Roberts) in 2015, when she was 16. She was already working as a prostitute at that time.

Kayla and her friend Wisdom were walking on Vernon Avenue in 2015 when defendants approached in separate cars. Kayla got into Morris's car, and Wisdom got into Roberts's car. Defendants drove them to Wisdom's house, where Kayla and Morris exchanged phone numbers. Kayla and Morris subsequently engaged in "casual conversation" over text message.

Kayla "eventually" reconnected with Morris in person. He drove her to Sepulveda, a "track," where she "went to work." They did not have an explicit conversation about the work beforehand; Kayla explained, "I didn't say what I was doing for him. I knew what was going on." Kayla denied that she was working for Morris at that time: "there was never a conversation as to who I was giving the money to for what I was doing. So I don't think you can say I was working for C-Extra." Kayla only had one customer that day before she was arrested and ultimately placed in juvenile hall.

Kayla "AWOL'd" from juvenile hall a few weeks later, around May 9, 2015. A few weeks after that, she and her friend Adrianna ran into Morris around Figueroa and Imperial. She acknowledged that she told Rios during an interview that she saw Roberts drive by about five to ten minutes before she encountered Morris. Kayla and Adrianna got into Morris's car, and he drove them to Tam's, a local restaurant. From there, they

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[3] As we discuss more fully below, the court found Kayla unavailable to testify at trial, and her preliminary hearing testimony was read to the jury.

went to Burger King, where they met up with Roberts. Kayla testified that she left Burger King with Morris, and Adrianna left with Roberts. Kayla and Morris went to a Los Angeles motel, where they spent "a couple of days." Kayla worked as a prostitute on Figueroa on one of those days, even though that "track" was "not [her] preference." She got arrested again and was returned to juvenile hall.

Kayla was released from juvenile hall to a placement in July 2015. She "AWOL'd" almost immediately, at which point she called Morris "[t]o let him know I was out of jail and for him to come pick me up." He picked her up a few days later. Kayla did not "see C-Extra as a pimp because of the type of relationship that we had, the type of bond we had"; instead, she considered him a "homie" or "best friend." She nevertheless "paid his pockets" with money she earned while prostituting.

Kayla worked with a different person, Paid, for a while, but "ended up" back with Morris after Paid was arrested. Kayla was arrested in an October 2015 sting operation at a motel in Long Beach, where she had been staying with Morris.

Detective Arcala participated in the sting operation and detention of Kayla. He searched Kayla's cell phone and found "text messages and contact information for a person by the name of Extra."[4] Kayla referred to Extra as "Daddy" in several of the messages, in which she asked him to buy her food, clothes, shoes, and drugs. Several of the messages also mentioned "dates." Arcala testified that it is common for a commercial sex worker to advise her pimp of her "date" activity.

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[4] At various points in the record, Morris is referred to as "C-Extra," "Extra," and "Xtra." There is no dispute that all of those nicknames are associated with Morris.

Arcala testified that an adult woman, Mariah Lea, was found in the motel room with Kayla. Arcala ultimately determined that Lea and Kayla both were "committing an act of prostitution." Lea, who was 20 at the time of trial, testified that Kayla had called and invited her to a Long Beach motel to "make some money" in October 2015. Lea, who had been in "the game" since the age of 18 and knew Kayla and Morris, agreed to go to the motel. Surveillance video footage played for the jury showed Kayla, Lea, and Morris walking around the motel together. At some point, a man came to the motel in response to an ad Kayla posted for a "double date." The man, actually an undercover police officer, arrested Lea and Kayla. While Lea was in custody, the police took and searched her phone, which contained numerous late-night phone contacts between Lea and Morris in the days prior to her arrest at the motel.

Khariana H. testified that she met Kayla in juvenile hall in 2015.[5] They spoke about "the game," and Kayla gave Khariana Morris's phone number. Khariana called Morris and expressed interest in working for him. Morris and Roberts came to Khariana's house together in June 2015, but she did not answer the door because she was scared. Morris and Roberts eventually left her house together.

**C. Adrianna**

Adrianna, who was 18 at the time of trial, entered "the game" when she was 16. She met Kayla in a juvenile placement, and the two of them worked on the Figueroa "track" together. Adrianna met Extra for the first time when she was with Kayla.

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[5] Because the court declared a mistrial on the counts involving Khariana, we include only her testimony relevant to the counts that were sustained.

Adrianna identified Extra in court as Morris. Morris told Adrianna she was beautiful, and they exchanged phone numbers.

Morris gave Adrianna and Kayla a ride to Tam's, where they got food and smoked marijuana. Morris then drove them to Burger King, where they met Major; Adrianna identified Major in court as Roberts. Morris and Roberts talked to one another, and then Roberts joined the others in smoking marijuana. When they finished smoking, Adrianna left with Roberts in his car, and Kayla left with Morris. Adrianna did not tell Roberts "straight up" that she was a commercial sex worker; she testified, "for people that's in the game, it's obvious."

Adrianna, Kayla, Morris, and Roberts stayed "together even though [they] were in different cars." The four of them arrived at another location, at which Adrianna and Kayla used ecstasy. Eventually, the foursome went to a motel, where Morris and Roberts got two rooms.

In an interview with LAPD officer Vanessa Rios that was played for the jury, Adrianna told Rios, "They were trying to get us to work on Fig," "telling us the good about it." Adrianna further told Rios, "They" also "[gave] us pills" to "keep us high," but Adrianna and Kayla did not get "to the point where we're just like, oh, I took this pill. I'm super high. I'm just going to do whatever these men - - Like we were still in the mindset like we really didn't want to work." She also told Rios that Morris or Roberts told them that he wanted to "'put you down on Fig in the 50's,'" because he was "very comfortable over there," but she and Kayla continued to refuse. Later that night, however, they agreed to go to "Western in the 20's. And then Western and Pico."

Adrianna further told Rios, "then Xtra and [*sic*] convinced Kayla to finally get down Fig. This was the daytime. And she

finally got down, and Major was like, 'Your homegirl got down. Like why you don't want to get down?'" Adrianna responded that she was not comfortable and did not want to "'get down on Fig.'" Roberts "got upset," "flicked" her in the face with his fingers, and told her, "You ain't made me no money. Go get me some money." Adrianna told Rios she told Roberts "okay" and "just started being quiet."

At trial, Adrianna claimed she had been lying during the interview with Rios. She testified that she "never" worked as a prostitute for Morris or Roberts and did not "get down" when she was with them. She described Roberts, with whom she stayed for "about two days" "altogether," as her "big homie, like somebody, if I needed help while I was on the streets, I could call," and said that Morris "never asked me to go on the track." Adrianna denied that Morris and Roberts provided her and Kayla with pills—"Kayla had the connection"—but admitted that defendants furnished marijuana. Adrianna explained that she was "telling her [Rios] anything" during the interview. Detective Johnson testified that it is not uncommon for sex workers who testify in court "to say things differently than what they told you at the beginning of the investigation."

### D. Additional Evidence

#### 1. Jail Call

In addition to excerpts from Adrianna's interview, the prosecution played for the jury part of a recorded phone call Roberts made to Morris from jail on September 14, 2015.[6] In that phone call, defendants referred to one another as "P." Roberts

[6] The parties stipulated that Roberts "has been in a custodial facility continuously from August 31, 2015, to the present date."

asked Morris about "the money situation, right, from the P thing," and asked Morris how he "wanted to work that?" Morris told Roberts that Kayla had "found her way back to daddy" after "Pay the P" (presumably Paid) went to jail.

Adrianna joined the call partway through and said, "Hi Major. I miss you." She later said she loved and missed Roberts, who replied, "I don't need no bitches lying to me 'cause bitches already trying to take me down." After Adrianna left the call, Roberts told Morris to "[t]ell her I need some money." When Morris mentioned that he was going to pick Adrianna up soon, Roberts replied, "Wait a minute, she's going to let y'all pick her up and the bitch wouldn't let me—I'm gonna beat that bitch's ass." He then directed Morris to get Adrianna back on the line; when Morris did, Roberts told Adrianna that he was mad at her "[b]ecause before I went to jail and I was seeing you, you was staying in pocket with me, like, what the fuck." He then instructed her to put minutes on her phone, "cause the phones [*sic*] on all night." He explained, "I can't be bothering X [Morris] all the time 'cause, you know, he's gotta tend to his business and, you know, I need somebody to talk to." He then ended the conversation with Adrianna, because "I have to ask X to do something."

Roberts then told Morris, "Now I know you be committed to getting toes and stuff but I need them toes." Morris asked, "What toes?" Roberts responded, "that was on the phone"—referring to Adrianna. Morris then said, "I'm fittin' to go pick her up—I'm fittin' to go pick her up right now." Morris apologized and said, "yeah them going to be your your [*sic*] toes. I'm just an assistant pimp, remember? I'm assistant pimp." Roberts responded, "Hey—hey—hey now. You ain't got to say what you are. We

already know what's going down. You know what I'm saying?" Morris then said, "I love you, cuz, I'm just fuckin.'" The excerpt of the call concluded with Roberts warning Morris to be careful.

**2. Morris's Arrest**

Morris was arrested in the company of former codefendant Anderson on February 23, 2016. Anderson consented to a search of her cell phone, which contained a video of Morris rapping. On the video, which was played for the jury and admitted into evidence, Morris rapped lyrics including "XTRA P, I do it for the fee"; "not the bad bitch about the 20s on Western"; "Money over bitches. I play the game, and I ain't even tryin' to win it."[7]

LAPD officer Michael Munjekovich testified that he participated in Morris's arrest. Munjekovich searched Morris's vehicle incident to the arrest and found a key for a room at the Rio Palace Motor Inn. Investigation revealed that Morris had rented a room at the Rio Palace Motor Inn; Munjekovich used the key found in the car to open the room. In the single-bed room, he found male and female clothing, bank cards with Morris's name on them, and a journal with Kayla's name on it.

The words "All on a Bitch" were tattooed on Morris's stomach.

**3. Lysheawn**

Lysheawn G., who was 17 at the time of trial, testified that she entered "the game" when she was 15. She met Major, whom she identified in court as Roberts, while she was working as a prostitute on the Western "track." He became her pimp that same day. She followed the rules of "the game" while working for him and gave him all of the money she earned. While she was

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[7]The court instructed the jury that the rap video was admitted against Morris only.

working for Roberts, Lysheawn got the word "Major" tattooed on her arm.

### II. Defense Evidence

Roberts called LAPD detective Gabriel Ruiz as a witness. He testified that on December 10, 2015, he found Adrianna in the company of a different suspected human trafficker he was investigating. He found items related to pimping and pandering in the trunk of the car they were driving, namely condoms, women's clothing, and "some paraphernalia consistent with clothes worn by pimps."

Both defendants called Rios as a witness. She testified that Khariana told her that she met Roberts through Morris, who tried to recruit her. Khariana also told Rios that Roberts did not get out of the car on the day he and Morris went to her house. Khariana was not able to identify Roberts in a six-pack, and thought she was identifying Roberts when she was shown a six-pack containing Morris's photo. Rios never asked Khariana to describe Roberts or Morris.

## DISCUSSION

### I. Severance

Defendants contend that the trial court abused its discretion by denying their motions to sever their trials. We disagree.

#### A. Background

Prior to trial, defendants filed separate motions to sever their trials. Roberts contended that his case would be prejudiced by Morris's, because Morris's case contained more charges and stronger evidence, some of which was admissible only as to him. Roberts also argued that his confrontation clause rights could be violated if Morris's out-of-court statements were admitted, and

that he and Morris planned to present antagonistic defenses. Morris made similar arguments.

At the hearing on the motions, the prosecutor indicated that he did not intend to introduce any of Morris's out-of-court statements, obviating any confrontation clause concerns. Roberts argued that severance was still warranted because the prosecution was attempting to bolster a weak case against him with a strong case against Morris. Morris contended that the evidence gave rise to conflicting defenses and would give Roberts's counsel the "opportunity to act as a second prosecutor" against him. The trial court denied the motions, citing the lack of confrontation clause issues as the basis for its decision.

**B. Analysis**

Section 1098 provides: "When two or more defendants are jointly charged with any public offense, whether felony or misdemeanor, they must be tried jointly, unless the court order[s] separate trials. . . . Joint trials are favored because they 'promote economy and efficiency' and '"serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts."' [Citation.]" (*People v. Coffman* (2004) 34 Cal.4th 1, 40 (*Coffman*).)

The court has discretion to order separate trials. (§ 1098.) "[S]everance may be appropriate 'in the face of an incriminating confession, prejudicial association with codefendants, likely confusion resulting from evidence on multiple counts, conflicting defenses, or the possibility that at a separate trial a codefendant would give exonerating testimony.'" (*Coffman*, *supra*, 34 Cal.4th at p. 40; see also *People v. Bryant* (2014) 60 Cal.4th 335, 379.) Severance also may be warranted "when 'there is a serious risk that a joint trial would compromise a specific trial right of one of

the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.'" (*Coffman*, *supra*, 34 Cal.4th at p. 40.) The key question for the trial court is whether joint trials pose an unacceptable risk of prejudice, the chief source of which ordinarily is evidence that is admissible to one defendant or charge but not others. (*People v. Earle* (2009) 172 Cal.App.4th 372, 387.)

We review the court's denial of a motion for severance for abuse of discretion, in light of the facts as they appeared at the time of the ruling. (*Coffman*, *supra*, 34 Cal.4th at p. 41.) We reverse only if the defendant demonstrates that the joinder amounted to a denial of due process. (*People v. Bryant*, *supra*, 60 Cal.4th at p. 379.) We find no abuse of discretion here.

Defendants were jointly charged with trafficking victims Khariana and Adrianna. "When defendants are charged with having committed 'common crimes involving common events and victims,' as here, the court is presented with a 'classic case' for a joint trial." (*Coffman*, *supra*, 34 Cal.4th at p. 40.) Defendants—primarily Roberts—contend severance nevertheless was appropriate, because only Morris was charged with trafficking Kayla and the evidence pertaining to that charge was admissible only as to Morris and thus prejudiced Roberts. They contend that Kayla's testimony "essentially amounted to inadmissible propensity evidence" against Roberts by showing that he was "closely involved and associated with Morris." We reject these contentions. Kayla's testimony corroborated both Adrianna's testimony about her introduction to Morris and Roberts and Adrianna's interview with Rios.

Defendants further argue that other evidence, namely Morris's rap video and tattoo, also amounted to inflammatory

propensity evidence against Roberts. Again, we are not persuaded. The court expressly instructed the jury that the rap video was admitted against Morris only, and it is unclear how a tattoo on Morris's body is incriminating as to Roberts. Roberts argues that the jury may have concluded from this evidence that he and Morris were "like-minded," such that Roberts was a "bad actor and more likely to have committed the charged offenses." Any such risk was minimal given the other evidence, and did not compel the trial court to sever defendants' trials, particularly where it already had severed the gang allegations and Morris's firearms charge.

## II. Admission of Preliminary Hearing Testimony

Defendants contend that the trial court improperly found Kayla unavailable for trial and admitted her preliminary hearing testimony. They argue that the prosecution failed to prove that it exercised due diligence to secure Kayla's presence at trial. They also argue that her preliminary hearing testimony was not reliable, because they did not have the opportunity to cross-examine her at that proceeding with the same interest and motive that they had at trial, and that its introduction violated their right to confrontation and prejudiced them. We conclude the court properly admitted the testimony.

### A. Background

Kayla testified at the preliminary hearing on June 24 and 27, 2016. She was in juvenile placement at Maryville at the time, and the probation department transported her to and from court.

Jury selection in this case began on Thursday, September 8, 2016, and a panel was sworn in on Tuesday, September 13, 2016. The prosecutor made his opening statement on September 14, 2016.

On Monday, September 12, 2016, during jury selection, the prosecutor notified the court that his investigators had been unable to locate Kayla. He requested a due diligence hearing, which commenced on September 13, 2016, before the jury was sworn in.

At the hearing, LAPD officer Rios testified that she spoke to Kayla in person at her juvenile placement one week after the preliminary hearing, in early July 2016. At that time, Kayla told Rios that former codefendant Anderson's mother had approached her and told her she needed to stop snitching. Rios got the impression that Kayla was scared to testify. Rios did not tell Kayla at that time that she would need to testify because she feared Kayla would run away if she knew.

Sometime later in July, Rios learned from Kayla's "advocate" and the placement program that Kayla had left her placement. A couple weeks later, around the end of July, Kayla called Rios. Kayla told Rios that she was in Las Vegas, but did not provide any other information about her whereabouts.

After that call and prior to trial, Rios tried to reach Kayla by contacting her advocate. The advocate gave Rios a different phone number for Kayla, but Rios got no answer when she called, and her messages were not returned. Rios estimated that she called the number "maybe 10 to 15 times," but did not attempt to obtain subscriber information from the cell phone service provider. Rios told the advocate that Kayla needed come to court, but did not direct the advocate to relay the message to Kayla.

Kayla's advocate told Rios that she believed Kayla was in Las Vegas. Rios contacted a Las Vegas-based human trafficking unit to see if it had any information about Kayla; she asked her Las Vegas counterparts to check the local jails, hotels, and

internet postings. About once a week, Rios drove through some Los Angeles "tracks," including Western and Figueroa, to see if Kayla had returned to Los Angeles and was working there.

Rios testified that Kayla's parents "lived from motel to motel" and did not have a fixed home address she could check. She contacted the last motel address they had on file with the Los Angeles Department of Children and Family Services in late July, but the family no longer lived there.

Rios did not intensify her search for Kayla until about two weeks prior to trial, because she had "numerous other cases" to work on. During those two weeks, she visited local "tracks" to look for Kayla three times, and sent other members of her team to do so on additional occasions. On the weekend beginning Friday, September 2, 2016, Rios's partner contacted the LAPD's 77th Street vice unit so that unit could look for Kayla. Rios's supervisor also sent out a countywide e-mail or fax alert around that time. On the next weekend, after jury selection already had begun, Rios made a similar request to the LAPD's southeast vice unit. Rios did not reach out to 77th Street vice that weekend.

Over the immediately preceding weekend—September 10-11—Kayla's advocate alerted Rios that Kayla had been posting on local "adult websites, for prostitution activity." Rios consulted the websites and saw postings for Long Beach, Anaheim, and San Bernardino that had Kayla's and Adrianna's photos on them. She and other law enforcement officers "attempted to set up dates" with Kayla and Adrianna to "recover Kayla" and "take Adrianna into custody." One of Rios's colleagues made contact with Kayla and scheduled a "date." A few hours later, however, Rios received a text message and phone call from Adrianna. Adrianna told Rios that she and Kayla were together and had

heard Rios was looking for them. She also told Rios that they were out of town and were not going to come to court. Kayla stopped replying to messages about the sting "date," which did not happen. Rios did not speak to Kayla.

On Monday, September 12, Rios and her team separately "went through all of L.A. County and Orange County prostitution tracks," using undercover cars. Their unsuccessful search lasted from 7:00 p.m. until 2:00 a.m. the following morning, the day of the due diligence hearing.

The prosecutor also called LBPD detective Johnson. Johnson testified that the prosecutor first asked him to look for Kayla on September 1, 2016. Johnson looked for Kayla for three hours on September 1, 2016; for about eight-and-a-half hours on September 4; for about four hours on September 7; for about eight hours on September 10; and for about five hours on September 12. He also looked for Kayla on September 6. During those times, he checked social media, prostitution websites, and police records, but did not contact the phone company to get information on the subscriber(s) to the phone numbers associated with Kayla. Johnson also "checked several prostitution tracks to see whether or not we could locate her on the street." He thought he saw Kayla on Figueroa on September 10, but she ran away when he tried to approach her.

On September 12, 2016, the day before the hearing, Johnson and his team "checked the Los Angeles tracks, which included the Broadway Street track, Figueroa Street track and Western Blvd," as well as "the Long Beach Blvd. track, Imperial Highway track and Manchester Blvd. track before going back to Long Beach and checking Pacific Coast Highway and Anaheim Street." Johnson's supervisor traveled to Orange County to check

the tracks on Harbor and Beach Boulevards. Johnson testified that they "thought that we would probably be able to locate her either on prostitution tracks or via the internet and some of the prostitution websites or through social media."

After the testimony concluded, Morris argued that the prosecution failed to demonstrate due diligence in attempting to locate Kayla. Citing a police report that is not in the record, he contended that Rios did not begin looking for Kayla until September 12, 2016, two days after trial was scheduled to begin. Morris further argued that the cross-examination his former counsel conducted at the preliminary hearing was not sufficiently aligned to his current interest and motives. Roberts did not make any arguments at the time.

The trial court rejected Morris's arguments. It stated that it would expect the prosecution to continue searching for a witness even after the start of trial, and found that Morris's counsel had the same interest and motive when examining Kayla at the preliminary hearing as Morris had at trial, namely challenging Kayla's credibility. The court found that Kayla was "unavailable and the People may use the prior testimony."

Later, as the prosecutor prepared to introduce Kayla's preliminary hearing testimony, Roberts argued that the prosecution failed to exercise due diligence "with two weeks of looking for the person right before the trial was going to begin." Morris joined the objection and asserted that he had case law to support his position. The trial court stated that it had already held a hearing on the matter and that its "ruling remains the same."

**B. Analysis**

The state and federal constitutions afford a criminal

defendant the right to confront the prosecution's witnesses. (U.S. Const., 6th Amend.; Cal. Const., art. 1, § 15.) That right is not absolute, however; under certain circumstances, the prosecution may introduce a witness's out-of-court statements at trial. (*People v. Herrera* (2010) 49 Cal.4th 613, 621 (*Herrera*).) Evidence Code section 1291 sets forth the requisite circumstances. (See *People v. Friend* (2009) 47 Cal.4th 1, 67; Evid. Code, § 1291.) Under that statute, a witness's prior testimony is not rendered inadmissible by the hearsay rule if (1) "the declarant is unavailable as a witness," and (2) the "party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing." (Evid. Code, § 1291, subd. (a)(2).)

**1. Unavailability and Due Diligence**

A witness is unavailable when he or she is "[a]bsent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process." (Evid. Code, § 240, subd. (a)(5); see also *People v. Valencia* (2008) 43 Cal.4th 268, 291-292 ["California law and federal constitutional requirements are the same."].) To establish the exercise of reasonable or due diligence and unavailability, "the prosecution must show that its efforts to locate and produce a witness for trial were reasonable under the circumstances presented." (*Herrera*, *supra*, 49 Cal.4th at p. 623.) There is no "'mechanical definition'" of the term due diligence; it "'connotes persevering application, untiring efforts in good earnest, efforts of a substantial character.'" (*People v. Cromer* (2001) 24 Cal.4th 889, 904 (*Cromer*).) "Considerations

relevant to the due diligence inquiry 'include the timeliness of the search, the importance of the proffered testimony, and whether leads of the witness's possible location were competently explored.'" (*Herrera*, *supra*, 49 Cal.4th at p. 622.)

We "'defer to the trial court's determination of the historical facts of what the prosecution did to locate an absent witness,'" and "'independently review whether those efforts amount to reasonable diligence sufficient to sustain a finding of unavailability.'" (*People v. Thomas* (2011) 51 Cal.4th 449, 503.)

Applying this mixed standard of review, we conclude that the prosecution exercised reasonable diligence to locate and produce Kayla. Its intensive two-week search for her involved coordinated efforts by multiple law enforcement agencies, including specialized units of the LAPD, the LBPD, and an agency in Las Vegas. Officers attempted to contact Kayla directly, as well as through her advocate, her parents, her social media, and her online prostitution ads. Rios and Johnson testified that they searched for Kayla in police records and on several prostitution tracks, and that one of their colleagues attempted to arrange a "date" with her. Rios additionally testified that she feared Kayla would abscond if she knew she had to testify, and that her workload precluded her from intensifying her efforts until approximately two weeks before the jury was empaneled. Johnson was recruited to begin searching on September 1, 2016, at which point he devoted upwards of 28 hours to the search. Other officers and agencies also devoted time and resources to finding Kayla. Ramping up intensive search efforts two weeks prior to trial was reasonable under the circumstances. (Cf. *People v. Wilson* (2005) 36 Cal.4th 309, 341 [due diligence found where detective spent two days searching for

witness].)

Defendants contend these efforts were insufficiently diligent because they did not begin until shortly before trial. They argue that the prosecution should have started looking for Kayla in July, when Rios learned she had left her placement, or when she called from Las Vegas. They contend that *Cromer*, *supra*, 24 Cal.4th 889, is "illustrative" of their point that "the prosecution unreasonably delayed in trying to contact Kayla, and thereafter made inadequate attempts to arrange for her to testify."

In *Cromer*, the alleged victim of defendant's robbery, Culpepper, identified him in a photo lineup and testified at his preliminary hearing. She failed to appear at trial, however. (*Cromer*, *supra*, 24 Cal.4th at p. 893.) At the due diligence hearing, evidence showed that Culpepper testified under subpoena at the June 13, 1997 preliminary hearing and appeared to be a cooperative witness. (*Id.* at p. 903.) About two weeks later, officers patrolling her neighborhood noticed that she was not there and reported that information to the prosecution. Trial was scheduled for September 9, 1997, and was then rescheduled to November 20, 1997, December 11, 1997, and January 12, 1998. Subpoenas issued for September 9 and December 11, but the prosecution made no effort to serve them on Culpepper. (*Ibid.*) "[I]t was not until December 1997, with the January 12, 1998 trial date looming ahead, that the prosecution made any serious effort to locate her. Two investigators went to Culpepper's former residence five or six times, only to be informed by a woman at that address that Culpepper no longer lived there." (*Ibid.*)

Defendant's trial was put over to January 22, 1998, the final permissible date on which to bring him to trial. (*Cromer*,

*supra*, 24 Cal. at p. 903.) On January 20, someone at Culpepper's former residence told prosecution investigators that she was living with her mother in San Bernardino. (*Ibid.*) The prosecution did not follow up on this information until the day of trial, when an investigator searched DMV records, obtained the San Bernardino address, and drove to San Bernardino. (*Id.* at pp. 903-904.) Someone at the house said that Culpepper's mother was out and that Culpepper did not live there. The investigator left a subpoena for Culpepper but did not return to San Bernardino or make other efforts to locate Culpepper or her mother. (*Id.* at p. 904.) The prosecution consulted "computerized information systems, the county jail, and the county hospital," but made no other efforts to locate Culpepper. (*Ibid.*)

The trial court ruled that the prosecution demonstrated reasonable diligence, but the court of appeal reversed. The Supreme Court affirmed that reversal. It explained: "the undisputed facts do not demonstrate that the prosecution exercised reasonable diligence to secure Culpepper's attendance at defendant's trial. Although the prosecution lost contact with Culpepper after the preliminary hearing, and within two weeks had received a report of her disappearance, and although trial was originally scheduled for September 1997, the prosecution made no serious effort to locate her until December 1997. After the case was called for trial on January 20, 1998, the prosecution obtained promising information that Culpepper was living with her mother in San Bernardino, but prosecution investigators waited two days to check out this information. With jury selection under way, an investigator went to Culpepper's mother's residence, where he received information that the mother would return the next day, yet the investigator never

bothered to return to speak to Culpepper's mother, the person most likely to know where Culpepper . . . was. Thus, serious efforts to locate Culpepper were unreasonably delayed, and investigation of promising information was unreasonably curtailed." (*Cromer*, *supra*, 24 Cal.4th at p. 904.)

*Cromer* is distinguishable. There, the prosecution waited until the eleventh hour to initiate and conduct a half-hearted search for Culpepper. Here, the prosecution's investigators, Rios and Johnson, spoke to Kayla's advocate, searched for her parents, reached out to colleagues in Las Vegas and local specialized police units, and searched databases and online sources for Kayla. They began these efforts shortly after Kayla left her placement and intensified them weeks before trial, not months after its originally scheduled start date. Unlike *Cromer*, the investigators in this case devoted significant time and resources to locating the witness and pursuing and following leads, even across county and state lines. Moreover, Kayla, unlike Culpepper, was actively trying to evade detection and refused to cooperate once she realized the prosecution was looking for her.

Defendants also contend that the prosecution should have done more, both to prevent Kayla from leaving and to find her once she did, because she was a known flight risk. They assert that the prosecution could have outfitted Kayla with an ankle monitor or undertaken other unspecified efforts to prevent her from leaving, or retrieved her phone records to locate her once she did.

It is true that the prosecution could have taken those or other steps, but it was not required to do so. "An appellate court 'will not reverse a trial court's determination [of unavailability] simply because the defendant can conceive of some further step

or avenue left unexplored by the prosecution. Where the record reveals, . . . that sustained and substantial good faith efforts were undertaken, the defendant's ability to suggest additional steps (usually, as here, with the benefit of hindsight) does not automatically render the prosecution's efforts "unreasonable." [Citations.] The law requires only reasonable efforts, not prescient perfection.' [Citation.]" (*People v. Diaz* (2002) 95 Cal.App.4th 695, 706.) The prosecution generally is not required to keep periodic tabs on every material witness. (*People v. Friend, supra,* 47 Cal.4th at p. 68; see also *People v. Wilson*, *supra*, 36 Cal.4th at p. 342.)

Defendants argue that the general rule should not apply here because the prosecution knew "of a 'substantial risk that this important witness would flee'" and therefore had an affirmative obligation "'to take adequate preventative measures' to stop the witness from disappearing." (*People v. Wilson*, *supra*, 36 Cal.4th at p. 342.)

It is unclear what sort of preventative measures would have been adequate in this case. At the time she disappeared, Kayla already was in custody, at a juvenile placement. Placing her in a more restrictive setting, even if practicable, was not necessary to demonstrate diligence. "To have a material witness who has committed no crime taken into custody, for the sole purpose of ensuring the witness's appearance at a trial, is so drastic that it should be used sparingly." (*People v. Cogswell* (2010) 48 Cal.4th 467, 477.) Moreover, Kayla's testimony, which largely overlapped with and corroborated Adrianna's, echoed independent evidence such as video and audio tapes. It was not the sole evidence supporting Morris's conviction on count three; it was material, but not so vital that extreme efforts to restrict

Kayla's freedom of movement were necessary.

**2. Motive to Cross-Examine**

In addition to demonstrating that Kayla was unavailable, the prosecution also had to establish that defendants had a previous opportunity to cross-examine her, with an interest and motive similar to their interests and motives at trial, before it could introduce her preliminary hearing testimony. (Evid. Code, § 1291, subd. (a)(2); *Herrera*, *supra*, 49 Cal.4th at p. 621.) The trial court concluded the prosecution met its burden, finding that defendants had "the same interest and motive" at the preliminary hearing and at trial, because "[c]redibility of the witness at that time clearly was an issue." Morris contended then, and reiterates now, that his interest and motives were not the same at the preliminary hearing as they were at trial. We disagree.

"Both the United States Supreme Court and [the California Supreme Court] have concluded that 'when a defendant has had an opportunity to cross-examine a witness at the time of his or her prior testimony, that testimony is deemed sufficiently reliable to satisfy the confrontation requirement [citation], regardless whether subsequent circumstances bring into question the accuracy or the completeness of the earlier testimony.'" (*Wilson*, *supra*, 36 Cal.4th at p. 343.) Morris's then-counsel cross-examined Kayla at the preliminary hearing, as did Roberts's counsel. Their motives and interests, both then and now, were to impugn Kayla's credibility and to demonstrate that the prosecution could not prove its case. Even if the motives may have shifted somewhat, they need not be identical, only similar. (*People v. Harris* (2005) 37 Cal.4th 310, 333.)

Defendants point to *People v. Louis* (1986) 42 Cal.3d 969, 990, to support the proposition that the motives and interests at the preliminary hearing are "peculiar to that early stage in the proceedings." This is an over-reading of *Louis*, which contained dicta observing that, *in that case*, "defense counsel appears to have cross-examined [the witness] with an interest and motive peculiar to that early stage in the proceedings – viz., to attempt to tie [the witness] down, in the interests of pretrial discovery, to one of at least three different stories he had told the police and others in the case." (*Louis*, *supra*, 42 Cal.3d at p. 990.) Moreover, in *Louis*, the magistrate apparently "frustrated" defense counsel's attempts at cross-examination by imposing "restrictions" and arguing with counsel. (*Ibid.*) The record of the preliminary hearing in this case reveals neither issue. *Louis* thus is inapposite.

**3. Harmless Error**

Even if the court erred in finding Kayla unavailable and admitting her testimony, any error would be harmless. (See *People v. Partida* (2005) 37 Cal.4th 428, 439; *People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Smith* (2003) 30 Cal.4th 581, 625.) Kayla's testimony overlapped significantly with Adrianna's. The jury also saw text messages demonstrating Kayla's relationship with Morris and motel surveillance video showing her with Morris and Lea before the sting operation, and heard Lea's testimony about going to the motel to engage in prostitution at Kayla's request. The jury also heard and saw other evidence establishing defendants' roles as human traffickers, including the jail phone call, the rap video, Morris's tattoo, and testimony from Lysheawn and Khariana. Kayla's preliminary hearing testimony merely added to and corroborated

this strong body of evidence.

## III. Exclusion of Expert

Defendants contend that the trial court deprived them of the ability to present a defense by excluding the testimony of their proffered human trafficking expert, Robert Royce. They argue that Royce's testimony would have "amplif[ied] and expand[ed] on the characteristics of human trafficking from that of [prosecution] expert Johnson," and "assisted the jury in determining the 'cause, induce, persuade,' elements of the human trafficking statute by focusing on the minors' background," helped the jury differentiate human trafficking from pimping and pandering, and clarified pimp partnerships and pimp-prostitute relationships. The court did not err in excluding the testimony.

### A. Background

The prosecution offered LBPD detective Johnson as its human trafficking expert. As summarized above, Johnson provided the jury with general information about "the game" and did not testify specifically about the case or the victims. He also did not use any hypotheticals.

At sidebar during Johnson's testimony, Roberts's counsel advised the court that the defense planned to call Royce to testify "on the same issues they are testifying about, on the characteristics of human trafficking." Counsel represented that Royce would not necessarily disagree with Johnson but would "amplify" and "expand" upon the characteristics of human trafficking, and discuss "how an investigation is conducted." When the court responded that such testimony may not be relevant, counsel stated, "I believe Mr. Royce will be giving different information and perhaps opposite information of what this officer is testifying to with regard to human trafficking." The

court reserved ruling.

During a later sidebar, Roberts's counsel stated that he wanted Royce to "testify about the complete social history of the minors who are prostitutes," which he argued was relevant to whether the defendants caused, persuaded, or induced them to engage in commercial sex work. Counsel stated that such testimony "would be very limited," because "a lot of what I was going to ask Mr. Royce would have been the same kinds of questions that I asked Detective Johnson."

The court reviewed Royce's expert report and concluded that the "only thing" relevant was his opinion refuting "Rios's" testimony that all minor prostitutes are human trafficking victims.[8] The court then stated that it "would strike that opinion if indeed [Arcala] gave that opinion," and that therefore Royce's testimony would not be relevant. When defense counsel objected, the court explained that its concern with Royce's testimony was "that he's not saying anything different from what the expert just said. And if you were asking him to summarize information in his report, I believe that's argumentative and also calls for a legal conclusion."

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[8] It appears that the testimony to which the court referred was actually elicited during Morris's cross-examination of Arcala. In response to Morris's query about the circumstances he would need to consider when determining whether a minor was the victim of human trafficking, Arcala testified that "all minors that prostitute are victims." When Morris asked for clarification, Arcala explained they were "victims of their circumstances when it comes to having them prostitute," because they lack the "ability to determine right and wrong and to make the decisions whether to have sex with somebody." Roberts's counsel did not object to that testimony at the time.

Counsel conceded that some aspects of Royce's testimony would "be duplicative" of Johnson's, and said he would not go into those areas. He contended that "the background of the victims" was "very important," however, because "unless you know their background, you don't know whether these guys caused them to do this act or they caused themselves to do this act because they have that volition." Counsel further contended that he wanted to ask questions "with regard to the investigations of the pimps too, . . . around those issues of their intent but not talking about their intent, just what investigations they have done." He said he would "be happy to forgo that," however, and just have Royce opine about the victims' "complete social history." Counsel also reiterated that he wanted Royce to refute Arcala's testimony about minors as human trafficking victims, because "you can't unring that bell."

The court ruled that the proffered rebuttal testimony would be an impermissible legal opinion. "I will specifically tell the jurors they are to ignore that completely and not consider it because I will tell them the definition of human trafficking. They will decide for themselves whether or not the young women who testified during the course of the trial are indeed victims. So that will be the ruling. . . . I'm not going to permit you to call him." The court later struck Arcala's testimony in the presence of the jury and instructed the jury not to consider it.

**B. Analysis**

The trial court is vested with broad discretion to admit or exclude expert testimony. The court properly may exclude expert testimony if it is cumulative or will confuse the jury. (*People v. Stoll* (1989) 49 Cal.3d 1136, 1159, fn. 20, citing Evid. Code, § 352.) We review its decision as to whether expert testimony is

admissible for abuse of discretion. (*People v. Brown* (2014) 59 Cal.4th 86, 101.) We focus on the propriety of the trial court's ruling rather than the rationale for it (*People v. Chism* (2014) 58 Cal.4th 1266, 1295, fn. 12).

Here, the defense sought to call Royce to testify "on the same issues" that Johnson testified about, namely background information about the characteristics of "the game" and human trafficking. Defense counsel acknowledged that Royce's testimony would be largely "duplicative" of Johnson's, and that "a lot of what I was going to ask Mr. Royce would have been the same kinds of questions that I asked Detective Johnson." The trial court did not abuse its discretion in reaching the same conclusion. The court reasonably concluded that any minimal probative value of duplicative testimony would have been outweighed by the undue consumption of time it would have taken defendants to present it. (See Evid. Code, § 352, subd. (a).) We are not persuaded otherwise by the cases defendants cite, *People v. Carter* (1957) 48 Cal.2d 737 and *People v. Filson* (1994) 22 Cal.App.4th 1841, disapproved on other grounds by *People v. Martinez* (1995) 11 Cal.4th 434, 452.

Defendants also sought to introduce Royce's testimony to rebut Arcala's testimony. This purpose became moot, however, when the trial court struck Arcala's testimony. Although defendants asserted that the testimony was prejudicial, the court explicitly directed the jury not to consider it. We presume the jury followed the court's instruction to disregard the stricken statement. (*People v. Buenrostro* (2018) 6 Cal.5th 367, 431.)

Defendants contend that the court should have allowed Royce to testify "to characteristics about the minor's [*sic*] background that distinguished the case from human trafficking,"

because such evidence would have shown that defendants did not "cause[ ], induce[ ], or persuade[ ]" any of the victims to engage in prostitution. (§ 236.1, subd. (c).) The problems with this argument are twofold.

First, the human trafficking statute did not require the prosecution to prove that defendants in fact "cause[d], induce[d], or persuade[d]" the victims to engage in prostitution because they were minors. The prosecution was only required to prove that the defendants *attempted* to cause, induce, or persuade the victims to engage in prostitution, because they were minors. (See § 236.1, subd. (c).) Whether the victims already were engaged in prostitution by their own volition, or continued to do so without the influence of defendants thus was not relevant to whether the defendants engaged in human trafficking. (See *People v. Zambia* (2011) 51 Cal.4th 965, 981.) Moreover, section 236.1, subdivision (e) provides that consent by a minor is not a defense to charges of human trafficking.[9] Thus, any evidence that the minors acted of their own volition and not at defendants' behest also was not relevant. The court properly could have excluded Royce's testimony on this basis.

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[9]This bar distinguishes the instant case from *In re M.D.* (2014) 231 Cal.App.4th 993, in which a minor sought to defend against charges she loitered with intent to commit prostitution by claiming that she was a victim of human trafficking. (See Evid. Code, § 1161, subd. (a).) The court in *In re M.D.* found insufficient evidence that she was a human trafficking victim because her alleged victimizer merely purchased her a public transit ticket and remarked that she could make more money as a prostitute than she could at a traditional job. Defendants here did much more than that: they provided the minors with food, shelter, and drugs, and actively encouraged them to work on the "track."

Second, and more importantly, the defendants sought to have Royce testify about "the complete social history of the minors who are prostitutes." Such testimony would not have been admissible under *People v. Sanchez* (2016) 63 Cal.4th 665. In that case, the Supreme Court held that an "expert is generally not permitted . . . to supply case-specific facts about which he has no personal knowledge." (*Id.* at p. 676.) "Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Ibid.*) Information about the victims' backgrounds or "social history" is quintessentially "case-specific," and there is no indication that Royce had personal knowledge of it. Such testimony therefore was inadmissible hearsay, and the court did not abuse its discretion in excluding it.

## IV. Lesser Included Offenses

Defendants contend that the trial court erred by failing to instruct the jury that pimping, pandering, and contributing to the delinquency of a minor are lesser included offenses of human trafficking. We disagree.

### A. Legal Principles

"A trial court has a sua sponte duty to 'instruct on a lesser offense necessarily included in the charged offense if there is substantial evidence the defendant is guilty only of the lesser.' [Citation.] Substantial evidence in this context is evidence from which a reasonable jury could conclude that the defendant committed the lesser, but not the greater, offense. [Citation] 'The rule's purpose is . . . to assure, in the interest of justice, the most accurate possible verdict encompassed by the charge and supported by the evidence.' [Citation.] In light of this purpose, the court need instruct the jury on a lesser included offense only

'[w]hen there is substantial evidence that an element of the charged offense is missing, but that the accused is guilty of' the lesser offense." (*People v. Shockley* (2013) 58 Cal.4th 400, 403-404.)

The Supreme Court has articulated two tests to determine whether an uncharged offense is necessarily included within a charged offense: the "elements" test and the "accusatory pleading" test. "Under the elements test, if the statutory elements of the greater offense include all of the statutory elements of the lesser offense, the latter is necessarily included in the former. Under the accusatory pleading test, if the facts actually alleged in the accusatory pleading include all of the elements of the lesser offense, the latter is necessarily included in the former." (*People v. Reed* (2006) 38 Cal.4th 1224, 1227-1228.)

We review de novo whether the trial court committed legal error by failing to instruct on an assertedly lesser included offense. (*People v. Cole* (2004) 33 Cal.4th 1158, 1218.)

**B. Pimping and Pandering**

Defendants contend that pimping and pandering—and attempted pimping and pandering—are lesser included offenses of human trafficking under the accusatory pleading test. Both defendants were charged with human trafficking with the intent to pimp and pander Adrianna (counts 2 and 6), and Morris was charged with human trafficking with the intent to pimp Kayla (count 3). They accordingly argue that they "could not be found guilty of human trafficking unless the jury also found true that [they] trafficked with the intent to commit the lesser offenses of pimping and pandering." Their argument as stated is true—the jury could not convict them of human trafficking without finding that they intended to pimp or pander. However, the requirement

that the prosecution prove intent to commit pimping or pandering is not sufficient to render either crime a lesser included offense of human trafficking as pled here.

Pimping requires a defendant to "derive[ ] support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or . . . solicit[ ] or receive[ ] compensation for soliciting for the person" whom he or she knows is a prostitute. (§ 266h.) As relevant here, pandering requires a defendant to promise, threaten, or use violence or a scheme to cause, persuade, or encourage another person to become a prostitute. (§ 266i, subd. (a)(2).) To commit human trafficking with intent to pimp or pander, a defendant need not *complete* either of these crimes. Instead, he or she must only *intend* to do so. Thus, to complete the crime of human trafficking as alleged in the information, defendants did not need to complete all of the elements of either pimping or pandering. Neither pimping nor pandering was a lesser included offense of human trafficking. (See *People v. Hicks* (2017) 17 Cal.App.5th 496, 508.)

Defendants also contend "there was arguably substantial evidence from which a reasonable juror could infer that pimping and pandering occurred, but insufficient evidence that [defendants] caused, induced, or persuaded either minor to engage in a commercial sex act for purposes of the human trafficking statute." They argue this is because "Adrianna and Kayla were prostitutes before they met [defendants] including having various pimps." This argument also fails. "[T]he proscribed activity of encouraging someone 'to become a

prostitute,' as set forth in section 266i, subdivision (a)(2), includes encouragement of someone who is already an active prostitute." (*People v. Zambia*, *supra*, 51 Cal.4th at p. 981.)

**C. Contributing to the Delinquency of a Minor**

Defendants also contend that contributing to the delinquency of a minor (§ 272) is a lesser-included offense of human trafficking under the accusatory pleading test. This contention also fails.

A defendant contributes to the delinquency of a minor if he or she commits an act or omission which "causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code." (§ 272, subd. (a)(1).) "Thus, one contributes to the delinquency of a minor by bringing a minor within the reach of section 300, 601, or 602 of the Welfare and Institutions Code." (*People v. Vincze* (1992) 8 Cal.App.4th 1159, 1163.)

Section 601 of the Welfare and Institutions Code pertains to minors who are truant or habitually disobey their parents; it is not relevant here. (See Welf. & Inst., § 601.) Section 602 of the Welfare and Institutions Code confers juvenile court jurisdiction over minors who commit crimes, and engaging in an act of prostitution ordinarily is a crime under section 647, subdivision (b)(1). However, section 647, subdivision (b)(1) "does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision." (§ 647, subd. (b)(5).) Instead, "[a] commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code." (*Ibid.*) Section 300, subdivision

(b)(2) of the Welfare and Institutions Code describes "a child who is sexually trafficked, as described in Section 236.1 of the Penal Code," and "whose parent or guardian failed to, or was unable to, protect the child." (Welf. & Inst. Code, § 300, subd. (b)(2).) Section 236.1 does not include an element that a parent or guardian has failed to protect the child. Nor does the accusatory pleading here allege such facts. Thus, defendants have not shown that human trafficking cannot be committed without also committing the lesser included offense of contributing to the delinquency of a minor; the latter is not necessarily included in the former.

Moreover, even if we assume that contributing to the delinquency of a minor is a lesser included offense of human trafficking, a trial court is only obliged to instruct on a lesser included offense where there is substantial evidence from which a rational jury could conclude that the defendant committed only the lesser offense. (*People v. DePriest* (2007) 42 Cal.4th 1, 50.) We independently review the record to determine whether there is substantial evidence to support an instruction on a lesser included offense. (*People v. Trujeque* (2015) 61 Cal.4th 227, 271.) Substantial evidence is evidence that a reasonable jury could find persuasive. (*People v. Williams* (2015) 61 Cal.4th 1244,1263.) Defendants' arguments diverge here, but we conclude that the jury could not have found either of them guilty only of contributing to the delinquency of a minor.

Roberts contends that the jury could infer "(1) [Roberts] was Adrianna's 'big homie' who helped her out for a couple days and supplied her with a hotel room, (2) Adrianna prostituted herself in the hotel room, possibly without a pimp at the time, and (3) [Roberts] was not supported by any of Adrianna's

earnings." Under this set of facts, he argues, he could have facilitated Adrianna's engagement in a commercial sex act without the specific intent to pimp or pander her and therefore would not be guilty of human trafficking. We are not persuaded. Even if the jury found the above facts to be true, the lack of earnings does not mean that Roberts lacked the intent to obtain earnings (i.e., to pimp) or to encourage Adrianna to engage in prostitution. As discussed more fully below, ample evidence supported the jury's conclusion that Roberts trafficked Adrianna. Where the evidence points only to one conclusion, the court need not instruct on a lesser included offense.

Morris contends that the jury could have found that he introduced Adrianna to Roberts, directed her to leave the Burger King with Roberts, and put her in touch with Roberts during the jail call. Based on this evidence, he argues, the jury "could have inferred that while there was no evidence to of any specific intent on [his part] to pimp or pander Adrianna and/or aid and abet Roberts in human trafficking, the evidence was sufficient to support an inference that he caused, encouraged, or contributed to her delinquency and/or facilitated Roberts in doing so." No reasonable jury would conclude from this evidence that Morris, who referred to himself as Roberts's "assistant pimp," was merely putting two individuals in touch and thereby inadvertently contributing to Adrianna's delinquency. As discussed more fully below, the evidence strongly supported the jury's finding that Morris aided and abetted Roberts in the trafficking of Adrianna.

## V. Sufficiency of the Evidence

Defendants both contend that the evidence was insufficient to support their convictions involving Adrianna. Roberts contends that his conviction for trafficking Adrianna with the

intent to pimp cannot stand because "the 'derives support or maintenance' element was not supported by substantial evidence." Notably, Roberts does *not* challenge the sufficiency of the evidence supporting his conviction for trafficking Adrianna with the intent to pander. Morris, by contrast, challenges the sufficiency of both of his convictions involving Adrianna. He argues that the prosecution failed to prove that he directly trafficked Adrianna or aided or abetted Roberts in doing so.

We review claims challenging the sufficiency of the evidence to uphold a judgment for substantial evidence. Under that standard, we review "'the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt.'" (*People v. Bolden* (2002) 29 Cal.4th 515, 553, quoting *People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) ""'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'"" (*People v. Bean* (1988) 46 Cal.3d 919, 933, quoting *People v. Hillery* (1965) 62 Cal.2d 692, 702.)

**A. Roberts**

Roberts contends that the record fails to support an inference that he received, and thereby derived support from, the earnings of Adrianna. Under the heading seeking reversal of his human trafficking conviction, he argues that his "conviction for pimping must be reversed."

Roberts was not charged with or convicted of pimping Adrianna. He was charged with trafficking her *with the intent* to

pimp her. Section 236.1, subdivision (c), the statute under which Roberts was charged, sets forth a crime in which a defendant "causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation" of various statutes, including section 266h (pimping). As we discussed above, the prosecution did not have to prove that either defendant completed the act of pimping; it needed to prove only that he intended to do so. The evidence here amply supports that conclusion.

Adrianna testified that it would be "obvious" to Roberts that she was involved in "the game" when he met her at the Burger King. The jury also heard Adrianna's recorded interview with Rios, in which she stated that Roberts "was trying" to get her and Kayla to work on Figueroa, a pimp-controlled prostitution track, and that he and Morris plied them with drugs to keep them high. Adrianna also told Rios that she refused to go to the Figueroa track but acquiesced in Roberts's demands that she "work" on Western, another track. In addition, Adrianna told Rios that Roberts flicked her in the face and told her to go get him some money. The jury could readily infer from this evidence that Roberts intended to pimp Adrianna and therefore was guilty of human trafficking her.

**B. Morris**

Morris argues that "[n]o credible evidence established that [he] had anything to do with Adrianna's life as a prostitute" or that he "assisted or facilitated Roberts." He therefore contends that both of his convictions involving Adrianna must be reversed.

Morris acknowledges that the prosecution argued that he and Roberts were "pimp partners," but contends that "the only

evidence the jury heard about this term was when Robinson [*sic*] testified that sometimes pimp partners will work together by supervising the prostitutes and using intimidation through numbers to keep the girls in line." This is an understatement of the record, which was rife with evidence that defendants worked together; the jury could conclude from this evidence that Morris aided and abetted Roberts's trafficking of Adrianna.

During the jail call, Roberts told Morris that he needed "toes," and Morris assured him that he was going to pick up Adrianna "right now." Morris also referred to himself as Roberts's "assistant pimp" at that time. Multiple witnesses also testified that Morris and Roberts acted in concert. Khariana testified that Morris and Roberts came to her house together. Kayla testified that she saw Roberts drive down a known track shortly before Morris picked her up, and that she and Adrianna met up with Morris and Roberts at the Burger King. Adrianna testified that Morris and Roberts stayed together with her and Kayla "even though [they] were in different cars," and told Rios that defendants jointly encouraged her and Kayla to use drugs and go to "work" on the track. Adrianna also told Rios that Roberts tried to persuade her to work on Figueroa by invoking Morris's success with Kayla, further suggesting a partnership between the two men. It was reasonable for the jury to conclude that Morris aided and abetted Roberts's trafficking of Adrianna.

**VI. Cumulative Error**

Defendants argue that the cumulative effect of the errors they alleged rendered their trial unfair. We disagree.

"Lengthy criminal trials are rarely perfect, and this court will not reverse a judgment absent a clear showing of a miscarriage of justice. [Citations.] Nevertheless, a series of trial

errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error. [Citations.]" (*People v. Hill* (1998) 17 Cal.4th 800, 844.) Here, however, we found no error with respect to any of defendants' claims. Their claims of cumulative error accordingly fail.

## DISPOSITION

The judgments of the trial court are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.